

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

8 CHEM-SAFE ENVIRONMENTAL, INC.,  
9 a Washington corporation, and ABC  
10 HOLDINGS, INC., a Washington  
11 corporation,

NO. 1: 14-CV-3021-SAB

**ORDER GRANTING STATE  
DEFENDANT'S MOTION FOR  
PARTIAL SUMMARY  
JUDGMENT; REMANDING  
CASE**

14 RICHARD GRANBERG, an individual;  
15 GARY BLEEKER, an individual;  
16 NORMAN PECK, an individual; and  
17 VALERIE BOUND, an individual; and  
18 State of Washington, DEPARTMENT OF  
19 ECOLOGY.

### Defendants.

22 Before the Court is the state Defendants' Motion for Summary Judgment,  
23 ECF No. 50. A hearing on the motion was held on March 2, 2016, in Yakima,  
24 Washington. Plaintiffs were represented by Tyler M. Hinckley. Defendants were  
25 represented by Harold L. Overton and John A. Level.

Plaintiff initially brought this § 1983 action against several state actors, including Kittitas County, the Department of Ecology, and the various employees who work for these entities. The case was stayed early on to permit the appeals

1 process to work its way through the Washington courts. After the Washington  
 2 Court of Appeals issued its order, and the Washington Supreme Court denied  
 3 review, Defendants brought Motions for Summary Judgment. In response to the  
 4 motions, Plaintiffs agreed to dismiss the claims against Kittitas County and its  
 5 employees,<sup>1</sup> and also agreed to dismiss the claims against Richard Granberg and  
 6 Gary Bleeker. Thus, the remaining Defendants that are the subject of the pending  
 7 Motion for Summary Judgment are Norm Peck and Valerie Bound.

8 According to Plaintiffs' complaint, Defendants Norm Peck and Valerie  
 9 Bound deprived Plaintiffs' constitutionally-protected property interest by  
 10 "misrepresenting the existence of a release of hazardous waste at Chem-Safe's  
 11 facility to provide a fabricated basis to justify requiring Chem-Safe and/or ABC  
 12 Holdings to conduct sampling for environmental contamination, and as a basis to  
 13 justify placing the site on an environmentally contaminated site list." ECF No. 7 at  
 14 ¶ 75. Notably, Plaintiffs are no longer bringing due process claims against Peck  
 15 and Bound based on Kittitas County's issuance of a Notice of Violation and  
 16 Abatement (NOVA) and Health Order against Plaintiffs and on Kittitas County  
 17 requiring Plaintiffs to obtain a moderate risk waste facility permit.<sup>2</sup>

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18       <sup>1</sup> The Court granted the parties' Stipulated Motion to Dismiss Plaintiffs' Claims  
 19 Against Defendants Kittitas County and James Rivard on January 28, 2016, ECF  
 20 No. 77.

22       <sup>2</sup> The Washington Court of Appeals held that the issuance of the NOVA did not  
 23 deprive Plaintiffs of any constitutionally protected property interest because the  
 24 NOVA did not cause a deprivation of any permitted activity. *ABC Holdings, Inc.*  
 25 v. *Kittitas Cnty*, 187 Wash. App. 275, 286 (2015). Under Washington law, "[a]  
 26 violation notice, even if final, 'is not the type of encumbrance that constitutes a  
 27 significant property interest giving rise to procedural due process.'" *Id.* (citation  
 28 omitted).

1   **A. Summary Judgment Motion Standard**

2       Summary judgment is appropriate if the “pleadings, depositions, answers to  
 3 interrogatories, and admissions on file, together with the affidavits, if any, show  
 4 that there is no genuine issue as to any material fact and that the moving party is  
 5 entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). There is no genuine  
 6 issue for trial unless there is sufficient evidence favoring the non-moving party for  
 7 a jury to return a verdict in that party’s favor. *Anderson v. Liberty Lobby, Inc.*, 477  
 8 U.S. 242, 250 (1986). The moving party had the initial burden of showing the  
 9 absence of a genuine issue of fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317,  
 10 325 (1986). If the moving party meets its initial burden, the non-moving party  
 11 must go beyond the pleadings and “set forth specific facts showing that there is a  
 12 genuine issue for trial.” *Id.* at 325; *Anderson*, 477 U.S. at 248.

13       In addition to showing that there are no questions of material fact, the  
 14 moving party must also show that it is entitled to judgment as a matter of law.  
 15 *Smith v. University of Washington Law School*, 233 F.3d 1188, 1193 (9th Cir.  
 16 2000). The moving party is entitled to judgment as a matter of law when the non-  
 17 moving party fails to make a sufficient showing on an essential element of a claim  
 18 on which the non-moving party has the burden of proof. *Celotex*, 477 U.S. at 323.  
 19 The non-moving party cannot rely on conclusory allegations alone to create an  
 20 issue of material fact. *Hansen v. United States*, 7 F.3d 137, 138 (9th Cir. 1993).

21       When considering a motion for summary judgment, a court may neither  
 22 weigh the evidence nor assess credibility; instead, “the evidence of the non-  
 23 movant is to be believed, and all justifiable inferences are to be drawn in his  
 24 favor.” *Anderson*, 477 U.S. at 255.

25   **B. Facts**

26       At this stage of the proceedings, the Court must view the facts in the light  
 27 most favorable to Plaintiffs, the non-moving party.

28       Plaintiff Chem-Safe operates a waste transport and transfer facility in

1 Kittitas, Washington, on a portion of real property owned by Plaintiff ABC  
2 Holdings, Inc. Defendant Valerie Bound is a section manager within the  
3 Department of Ecology's (DOE) Toxics Cleanup Program. Defendant Norm Peck  
4 is a DOE Toxics Cleanup Program environmental specialist.

5 In 2009, Plaintiff received a Notice of Violation and Abatement (NOVA)  
6 and public health order from Kittitas County. The NOVA cited Plaintiff Chem-  
7 Safe for operating without proper State and County permits, and required Plaintiff  
8 to suspend all operations until a permit was granted, remove all materials, conduct  
9 a contamination test, and pay a \$500 penalty.

10 After the NOVA was issued, Kittitas County Environmental Health  
11 Supervisor and Interim Co-Administrator James Rivard informed DOE, and  
12 specifically Defendant Peck, that Chem-Safe had failed to store and handle  
13 hazardous or dangerous waste without proper Kittitas County permits and that he  
14 wanted Chem-Safe to conduct testing to determine if leaks or releases of  
15 dangerous waste had occurred at Chem-Safe. He sought technical assistance from  
16 DOE regarding the required testing.

17 In response, in June, 2011, Peck created an Initial Investigation Field Report  
18 that indicated that a spill had occurred at Chem-Safe, even though he knew there  
19 had been no spill. Peck then recommended to Defendant Bound that Chem-Safe be  
20 added to the contaminated sites list, which she did on June 22, 2011. On the same  
21 day, Peck sent Chem-Safe an Early Notice Letter Regarding the Release of  
22 Hazardous Substances, stating that DOE was placing Chem-Safe on the DOE's  
23 confirmed or suspected contaminated sites list because "soil and groundwater  
24 contamination is suspected at the site." ECF No. 59-13, Ex. M.

25 On August 2, 2011, Bound and Peck wrote a letter to Chem-Safe's engineer,  
26 Brad Card, stating that "[DOE] has concluded that a release of hazardous  
27 substances has occurred" at Chem-Safe." ECF No. 59-14, Ex. N. The letter also  
28 required sampling "to determine the nature and extent of contamination." *Id.*

1       In March, 2012, Bound met with Sky Allphin, president of Chem-Safe. She  
2 told him that if Chem-Safe entered into the DOE's Voluntary Cleanup Program  
3 (VCP), she would allow Chem-Safe to take four-to-six samples on the outside of  
4 the facility, and that if the samples came back clean, she would not require further  
5 testing, including testing of groundwater or tests under the building. Chem-Safe  
6 entered into the VCP only because of Bound's agreement regarding the required  
7 sampling.<sup>3</sup>

8       On May 31, 2013, Plaintiffs emailed Kittitas County and specifically James  
9 Rivard, the Sampling and Analysis Plan (SAP) from Landau Associates, the firm  
10 Plaintiffs hired to conduct the sampling. Rivard forwarded the email and the SAP  
11 to Peck and Bound on the same day. On June 5, 2013, Rivard sent Chem-Safe an  
12 email stating that "although additional testing and sampling sites are desired, after  
13 our discussions it was agreed upon that the sampling plan is acceptable as  
14 submitted." ECF No. 63-21, Ex. U.

15       The SAP was conducted in June, 2013. Landau Associates concluded that  
16 "there has been no release to subsurface soil. Based on these findings, no further  
17 action or investigation appears warranted at this time." ECF No. 73-18, Ex. 18.  
18 Based on these findings, Bound indicated she would provide Plaintiffs with a "no  
19 further action" letter that would state that no further testing or remedial action was  
20 necessary at Chem-Safe.

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21  
22       <sup>3</sup> Plaintiff made repeated requests to Rivard and Bound for the identification of the  
23 place and nature of the release alleged in the letter. Bound never responded. In  
24 October, 2012, Chem-Safe's president submitted a public records request to DOE  
25 and Kittitas County. Meanwhile, Kittitas County filed a Motion to Show Cause  
26 why Chem-Safe should not be held in contempt for failing to conduct the testing.  
27 The superior court granted the motion and consequently Chem-Safe conducted a  
28 sampling in accordance with a plan approved by the County and DOE.

1       Chem-Safe never received a “no further action” letter and the site remains  
 2 on DOE’s contaminated sites list. Instead, in January, 2014, Peck issued a letter  
 3 stating that DOE has determined that further remedial action is necessary to  
 4 characterize and/or clean up contamination at the site.

5       Plaintiff brought suit in the Eastern District of Washington, asserting two  
 6 claims: (1) Section 1983 --violation of property right and equal protection; and (2)  
 7 a state law claim for tortious interference. Plaintiff sought the following relief: (1)  
 8 damages; (2) an order requiring withdrawal of the NOVA; (3) declaratory  
 9 judgment that Chem-Safe may continue to conduct its operation under its DOE  
 10 permit; (4) injunctive relief preventing DOE from requiring Chem-Safe to conduct  
 11 additional sampling of the site; (5) injunctive relief requiring DOE to cause  
 12 Plaintiff’s site to be removed from DOE’s contaminated sites list; (6) injunctive  
 13 relief requiring DOE to place Chem-Safe back on the DOE hazardous work  
 14 services directory; (7) punitive damages; and (8) attorneys’ fees.

15       Defendants’ Motion for Summary Judgment applies to Plaintiff’s Section  
 16 1983 claims only.

## 17 **C. Section 1983 and Qualified Immunity**

### 18 **1. Section 1983**

19       To state a claim under § 1983, Plaintiffs must establish two essential  
 20 elements: (1) that a right secured by the Constitution or laws of the United States  
 21 was violated; and (2) that the alleged violation was committed by a person acting  
 22 under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988); *Naffe v. Frey*,  
 23 789 F.3d 1030, 1035 (9th Cir. 2015).

24       Plaintiffs assert Defendants Bound and Peck violated ABC Holdings, Inc.’s  
 25 substantive due process rights. To establish a substantive due process claim,  
 26 Plaintiffs must, as a threshold matter, establish it has a property interest protected  
 27 by the Constitution. *Wedges/Ledges of Calif v. City of Phoenix, Ariz.*, 24 F.3d 56,  
 28 62, (9th Cir. 1994) (*citing Board of Regents v. Roth*, 408 U.S. 564, 569 (1972)).

1 “A protected property interest is present where an individual has a reasonable  
 2 expectation of entitlement deriving from ‘existing rules or understandings that  
 3 stem from an independent sources such as state law.’” *Id.* (citation omitted). On  
 4 the other hand, “federal constitutional law determines whether that interest rises to  
 5 the level of a ‘legitimate claim of entitlement’ protected by the Due Process  
 6 Clause.” *San Bernardino Physician’s Services Medical Group Inc. v. San*  
 7 *Bernardino Cnty*, 825 F.2d 1404, 1409 (9th Cir. 1987) (quotation omitted).

8       The heart of a substantive due process claim is a showing that the state  
 9 actor’s interference with the plaintiff’s property rights was irrational and arbitrary.  
 10 *Bateson v. Geisse*, 857 F.2d 1300, 1303 (9th Cir. 1988). “[O]nly ‘egregious  
 11 official conduct can be said to be arbitrary in the constitutional sense: it must  
 12 amount to an ‘abuse of power’ lacking any ‘reasonable justification in the service  
 13 of a legitimate governmental objective.’” *Shanks v. Dressel*, 540 F.3d 1082, 1088  
 14 (9th Cir. 2008) (quotations omitted). If the evidence shows that it is “at least fairly  
 15 debatable” that the conduct is rationally related to a legitimate governmental  
 16 interest, there has been no violation of substantive due process. *Halverson v.*  
 17 *Skagit Cnty*, 42 F.3d 1257, 1262 (9th Cir. 1994) (citation omitted). That said, “[a]  
 18 substantive due process claim does not require proof that all use of the property  
 19 has been denied.” *Bateson*, 857 F.2d at 1303.

20       Substantive due process claims, however, are not a “font of tort law” that  
 21 superintends all official decision making. *Brittain v. Hansen*, 451 F.3d 982, 990  
 22 (9th Cir. 2009). The U.S. Supreme Court has instructed that courts “should  
 23 exercise the utmost care whenever [they] are asked to break new ground in this  
 24 field.” *Id.* (quoting *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997). “[N]ot  
 25 every violation of state law amounts to an infringement of constitutional rights.”  
 26 *Samson v. City of Bainbridge Island*, 683 F.3d 1051, 1060 (9th Cir. 2012).

27       **2. Qualified Immunity**

28       Qualified immunity shields government officials from civil damages

1 liability unless the official violated a statutory or constitutional right that was  
 2 clearly established at the time of the challenged conduct. *Reichle v. Howards*, \_\_  
 3 U.S. \_\_, 132 S.Ct 2088, 2093 (2012). “Requiring the alleged violation of law to be  
 4 clearly established balances . . . the need to hold public officials accountable when  
 5 they exercise power irresponsibly and the need to shield officials from harassment,  
 6 distraction, and liability when they perform their duties reasonably.” *Wood v.*  
 7 *Moss*, \_\_ U.S. \_\_, 134 S.Ct. 2056, 2067 (2014) (quotations omitted).

8 In determining whether Defendants are entitled to qualified immunity, the  
 9 Court applies a two-step analysis: (1) whether the facts alleged show that the  
 10 official’s conduct violated a constitutional right; and (2) whether the right was  
 11 clearly established. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). “To be clearly  
 12 established, a right must be sufficiently clear that every reasonable official would  
 13 have understood that what he is doing violates that right. In other words, existing  
 14 precedent must have placed the statutory or constitutional question beyond  
 15 debate.” *Reichle*, 132 S.Ct. at 2094 (quotations omitted). “This inquiry, it is vital  
 16 to note, must be undertaken in light of the specific context of the case, not as a  
 17 broad general proposition.” *Saucier*, 533 U.S. at 201. “If judges thus disagree on a  
 18 constitutional question, it is unfair to subject police to money damages for picking  
 19 the losing side of the controversy.” *Wilson v. Layne*, 526 U.S. 603, 618 (1999).  
 20 That said, it is not necessary that “the very action in question has previously been  
 21 held unlawful, but it is to say that in the light of pre-existing law the unlawfulness  
 22 must be apparent.” *Hope v. Pelzer*, 536 U.S. 730, 739 (2002).

23 “[W]hen properly applied, qualified immunity protects all but the plainly  
 24 incompetent or those who knowingly violate the law.” *Taylor v. Barkes*, \_\_ U.S.  
 25 \_\_, 135 S.Ct. 2042, 2044 (2015). Stated another way, “an officer is entitled to  
 26 qualified immunity unless existing case law ‘squarely governs the case here’”  
 27 *Mendez v. Cnty of Los Angeles*, \_\_ F.3d \_\_ (2016 WL 805719 \*3 (9th Cir. Mar. 2,  
 28 2016) (quoting *Mullenix v. Luna*, \_\_ U.S. \_\_, 136 S.Ct 305, 309 (2015) (emphasis

1 in original).

2 In *Pearson v. Callahan*, the U.S. Supreme Court instructed that courts may  
 3 grant qualified immunity on the ground that a purported right was not “clearly  
 4 established” by prior case law, without resolving the often more difficult question  
 5 of whether the purported right exists as all. 555 U.S. 223, 236 (2009).

6 **D. Analysis**

7 Here, Plaintiff has established there are genuine issues of material fact  
 8 regarding whether Defendants Bound and Peck made material misrepresentations  
 9 about the existence of a release of hazardous waste at Chem-Safe’s facility. That  
 10 said, Defendants Bound and Peck are still entitled to summary judgment because,  
 11 even assuming that Defendants Bound and Peck made the alleged  
 12 misrepresentations, Plaintiffs do not have a constitutionally protected property  
 13 interest to not be subjected arbitrarily to soil sampling requirements, and do not  
 14 have a constitutionally protected property interest to not be placed arbitrarily on  
 15 the confirmed or suspected contaminated site list based on fabricated evidence.  
 16 Additionally, summary judgment is appropriate because Defendants Bound and  
 17 Peck are entitled to qualified immunity.

18 **1. Scope of Constitutionally Protected Property Interest**

19 In attempting to establish their §1983 claim against Bound and Peck,  
 20 Plaintiffs rely on the general proposition that landowners have a constitutionally  
 21 protected property interest in ownership of real property and the right to devote  
 22 their land to any legitimate use. At the hearing, Plaintiffs clarified that the property  
 23 interest at issue is held by Defendant ABC Holdings, Inc.

24 Contrary to Plaintiff’s position, the scope of the Fourteenth Amendment’s  
 25 substantive due process does not cover the allegedly wrongful conduct committed  
 26 by Defendants Bound and Park. That is, even if Peck and Bound made the alleged  
 27 misrepresentations, Plaintiffs do not have a constitutionally protected property  
 28 interest in having Ecology employees refrain from recommending a site hazard

1 assessment, placing its property on Ecology's confirmed and suspected sites  
 2 database, or providing an opinion that further remedial action is necessary at the  
 3 Chem-Safe site. Requiring a site hazard assessment or being placed on the list  
 4 does not deprive Plaintiffs from operating its business or using its property.  
 5 Notably, Plaintiffs have not identified any state law, existing rules or  
 6 understandings that would provide a basis for its alleged constitutionally-protected  
 7 property interest.<sup>4</sup>

8 Additionally, even if Plaintiffs had such a property interest, Plaintiffs have  
 9 not shown bias, prejudice, or personal animosity on the part of Bound and Peck  
 10 against them, and have not shown an illegitimate reason for Bound and Peck's  
 11 actions that would give rise to a due process claim.

12 At oral argument, Plaintiffs identified the following as the basis for the

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13 <sup>4</sup> In *Cranwell v. Mesec*, the Washington Court of Appeals noted that while a filing  
 14 of a lis pendens notice can cause substantial economic effects that mirror those  
 15 resulting from the use of a real estate attachment, the filing of a lis pendens notice  
 16 does not constitute a significant property interest. 77 Wash.App. 90, 109-110  
 17 (1995). It reasoned that in such a case the landowner is not *prohibited* from  
 18 alienating or encumbering the property subject to lis pendens, notwithstanding that  
 19 it may be more difficult. *Id.* (“There is nothing to prevent the sale if the landowner  
 20 can find a willing buyer.”). Additionally, the court held that because a Notice of  
 21 Violation (NOV) operates much like a lis pendens in that it gives notice of the  
 22 alleged code violations to interested parties but does not in any way create a lien  
 23 on the property, the mere issuance and filing of the NOV is not the type of  
 24 encumbrance that constitutes a significant property interest. *Id.* at 111. The court  
 25 also noted that while the NOV, like a lis pendens notice, may temporarily cloud  
 26 title, it in no way prevents property owners from mortgaging or alienating their  
 27 property. *Id.*

1 alleged constitutional violation: Peck and Bound approving the sampling plan,  
2 obtaining the results of the sampling plan that show there has been no release to  
3 the subsurface soil and then refusing for no valid reason—just general statements  
4 of insufficiency—to remove Chem-Safe from the contaminated sites list. Plaintiffs  
5 maintain the case of *Del Monte Dunes at Monterey, Ltd. v. City of Monterey*, 920  
6 F.2d 1496 (9th Cir. 1990) is directly on point to these facts. There, the property  
7 owner alleged it had been unconstitutionally deprived of property through land use  
8 regulations. In that case, the city council had given approval to the 190-unit  
9 project, with 15 conditions that the City’s professional planning staff agreed the  
10 land owner had met. *Id.* at 1508. Even so, the city council rejected the final plan,  
11 giving only broad conclusory reasons for doing so. *Id.* The Ninth Circuit held that  
12 taking the facts in the light most favorable to the land owner, questions of fact  
13 remained whether the actions of the city council were arbitrary and irrational. *Id.*

14       *Del Monte Dunes* does not establish that Defendants violated their  
15 constitutionally protected property interests. Indeed, the Court has already  
16 determined that questions of fact exist whether Defendants made  
17 misrepresentations. But this determination is not dispositive in this case. Rather,  
18 the question the Court must answer, assuming that Defendants made  
19 misrepresentations and wrongfully placed Plaintiffs’ property on Ecology’s  
20 confirmed and/or suspected contaminated site list, is whether Plaintiffs have a  
21 constitutionally protected right not to be arbitrarily or irrationally placed on the  
22 confirmed and/or suspected contaminated site list on the basis of fabricated  
23 evidence.

24       Plaintiffs have not provided the Court with any case law to support their  
25 position that they do. In their brief, Plaintiffs cited to *Mathis v. Cnty of Lyon*, 633  
26 F.3d 877 (9th Cir. 2011), and they also relied on this case at oral argument to  
27 support its contention that ABC Holdings, Inc. has a constitutionally protected  
28 property interest in being kept off the suspected/ contaminated site list. In that

1 case, a county official entered a decedent's house without a warrant, after a  
 2 welfare check revealed that he had died. *Id.* at 878. The official took away  
 3 personal property, some of which he stored and some of which he sold. *Id.* The  
 4 plaintiffs were the three sons of the deceased and they asserted two property  
 5 interests: an ownership interest in their own personal property that was stored at  
 6 their father's residence and an interest in their father's personal property as  
 7 devisees under their father's will. *Id.* at 880 (J. Bybee, concurring in part and  
 8 dissenting in part). Judge Bybee noted the first claim was "clearly a cognizable  
 9 property interest under the Fourteenth Amendment" and ultimately concluded that  
 10 an heirs' interest in the decedent's real property as devisees qualifies as a property  
 11 interest under the Due Process clause. *Id.* This case, however, does not support  
 12 Plaintiff's position that it has a constitutionally protected property interest in not  
 13 being placed on the confirmed and/or suspected contaminated site list.

14 Similarly, the other cases cited by Plaintiff address substantive due process  
 15 claims in the context of land-use regulations. See ECF No. 70, at 7-8 (citing  
 16 *Shanks*, 540 F.3d at 1087 and *Action Apartment Ass'n v. Santa Montica Rent*  
 17 *Control Bd.*, 509 F.3d 1020 (9th Cir. 2007)). In these cases, due process claims  
 18 were recognized where a land use action lacks any substantial relation to the  
 19 public health, safety, or general welfare. *Id.* The problem for Plaintiffs in relying  
 20 on these cases is that Bound and Peck's alleged wrongful conduct does not  
 21 implicate any land-use regulation or land use action. Rather, their conduct simply  
 22 involves placing Chem-Safe on the confirmed and/or suspected contaminated site  
 23 list. Plaintiffs have not shown that they have been denied the right to use their land  
 24 for any legitimate use.

25 Plaintiffs also assert that Defendants Bound and Peck violated their  
 26 constitutional rights when they deliberately fabricated evidence of a hazardous  
 27 waste spill. They rely on two cases in support of this claim, *Richardson v.*  
 28 *Schubert*, 2015 WL 4627938 (D. Or. Aug 3, 2015) and *Costanich v. DSHS*, 627

1 F.3d 1101, 1113-14 (9th Cir. 2010). In both of these cases, however, the  
2 investigation implicated clearly established fundamental rights, that is, the right to  
3 a parent/child relationship as well as the loss of a foster care license. Without the  
4 involvement of a fundamental right, there is no support for transforming what is  
5 essentially a state tort claim into a § 1983 claim. *See Baker v. McCollan*, 443 U.S.  
6 137, 146 (1979) (“Section 1983 imposes liability for violations of rights protected  
7 by the Constitution, not for violations of duties of care arising out of tort law.  
8 Remedy for the latter type of injury must be sought in state court under traditional  
9 tort-law principles.”).

10 Consequently, Plaintiffs have failed to meet the threshold requirement under  
11 § 1983 of establishing that Bounds and Peck deprived them of a constitutionally  
12 protected property right and summary judgment is appropriate.

13 **2. Qualified Immunity**

14 Moreover, even if the court were to conclude Defendants Bound and Peck  
15 violated Plaintiffs’ constitutionally protected property rights, such rights—not to  
16 be placed on a confirmed and/or suspected contaminated site list based on  
17 deliberately falsified evidence and not to be required arbitrarily to conduct soil  
18 sampling—were not clearly established when the conduct at issue in this case  
19 occurred. Plaintiffs have failed to provide and the Court has been unable to find  
20 existing case law that “squarely governs” the case here. As such, Defendants  
21 Bound and Peck are entitled to qualified immunity.

22 **E. Supplemental Jurisdiction**

23 As a result of the Court granting Defendant’s Motion for Summary  
24 Judgment, the only claim remaining before the Court is the state law claim of  
25 tortious interference against the Department of Ecology. Pursuant to 28 U.S.C. §  
26 1367(c)(3) and *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 726 (1966),  
27 the Court declines to exercise supplemental jurisdiction over the remaining state  
28 law claim. As such, this action is remanded to the Yakima County Superior Court.

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. The state Defendants' Motion for Summary Judgment, ECF No. 50, is  
3 **GRANTED.**

4 2. The District Court Executive is directed to enter judgment in favor of  
5 Valerie Bound and Norm Peck and against Plaintiff.

6 3. The above-captioned action is **remanded** to the Yakima County  
7 Superior Court.

8 The District Court Executive is hereby directed to enter this Order and  
9 furnish copies to counsel.

10 **DATED** this 10th day of March, 2016.



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14 Stanley A. Bastian

15 Stanley A. Bastian  
16 United States District Judge  
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